

## CLUES TO THE ORIGINS OF WILLS

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We almost take for granted that one should execute a Will at some stage of life but this was not always so. In ancient times, no doubt after the death of a clan member, the strongest or the clan leader would merely help themselves to any item of the deceased worth keeping and the scraps would be fought over by the underlings. Gradually as civilisation progressed, matters became more structured and laws of inheritance were introduced – we have evidence of Wills dating back to Anglo-Saxon times before the Norman conquest of England.

Unlike Wills of today, which are confidential documents, these Wills were more the record of an oral public presentation of the wishes of the individual. Most individuals were illiterate, resulting in these Wills being recorded mainly by the educated clergy but always in the presence of many witnesses. It is uncertain whether these Wills could be revoked and amended as they appear to be donations made in contemplation of death and often the Will imposed an obligation upon the receiving beneficiary, almost in a contractual fashion.

Wills, both single and joint, seem to have been made by both males and females, married or not. Strangely though, no evidence exists as to the Will of a married female executed without the assistance of her husband.

The Wills usually followed four characteristic parts:

- The first, the *Heriot*, was a bequest to the King or other members of Royalty as an expression of gratitude and in recognition of the lord/vassal relationship. The *Heriot* is clearly the forerunner of our present Estate Duty!

- The second part was a substantial bequest to the local clergy or ecclesiastical group in exchange for the appropriate burial and necessary prayers to be recited, these prayers often enduring over many months.
- Thirdly, the Will contained bequests to other individuals, both close kin and others, of both immovable and movable property as well as monies. Some bequests had restrictions, as we have today, whilst many were outright awards.
- Fourthly, the Will concluded with a solemn curse upon anyone who would seek to overthrow or pervert the various bequests contained within the Will. The Will of Wulfgyth, executed in 1046, for example concludes with this damning clause:  
*“ And, he who ignore my Will, which I have executed with the witness of God, may he be denied this earth’s joy and may the almighty Lord who created and shaped all beings shut him out of the gathering of all holy ones on Doomsday; and, may he be taken to Satan, the devil, and to all his bedammed companions, to the pit of Hell, and there suffer, with the enemies of God, without ceasing, and never bother my heirs”.*

Many of these ancient Wills have been preserved by the ecclesiastical institutions who benefited in terms of the Will and some have found their way into university and important State libraries. These ancient clues to society provide a fascinating insight into the origins of Wills all those many years ago.

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Membership is drawn from trust companies and banks, as well as the legal, accounting and financial planning professions.

Activities of FISA members include but are not restricted to estate planning, the drafting of wills, administration of trusts and estates, beneficiary funds, tax and financial advice and the management of client assets.

FISA has close to 750 individual members, who collectively manage in excess of R280 billion. They draft several thousand wills each year and administer around 50 percent of deceased estates reported to the Master's Office.

FISA helps to make processes smoother for members and the public, particularly through its good working relationship with the Master's Office and SARS.